IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.35438 of 2015
and
M.P.No.1 of 2015

M/s.NTK Pharma
Represented by its Proprietor, Dr.T.Viswanathan,
3/233, Kundrathur Main Road,
Kovoor, Chennai-122. ..Petitioner

Vs

The Commercial Tax Officer,
Sriperumbudur Assessment Circle,
Varadharajapuram,
Chennai-602 103. .. Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TIN 33231667298/2013-14 dated 13.10.2015 and quash the same.

For Petitioner : Mr.R.Kumar
For Respondent : Mr.S.Manoharan Sundaram
Addl. Govt. Pleader (T)

O R D E R

The Petitioner has come forward with this Writ Petition challenging the impugned proceedings passed by the the respondent on 13.10.2015 in TIN 33231667298/2013-14.

2. Heard the learned counsel for petitioner and Mr.S.Manoharan Sundaram, learned Additional Govt. Pleader who took notice for the respondent.

3. The petitioner is a manufacturer and dealer in pharmaceutical goods and a registered dealer on the files of the respondent herein . The petitioner filed its monthly returns during the year 2013-2014 claiming input tax credit for the purchases made from registered dealers in the State of Tamilnadu. The petitioner claimed ITC as per Section 19(11) of the Tamilnadu Value Added Tax Act, 2006.

4. The respondent issued a notice dated 5.12.2014 proposing to reverse the input tax credit claimed by the petitioner on the ground that purchases were made from the dealer whose registration was cancelled. The petitioner raised objection by its letter dated 3.2.2015 stating that the registration of the seller is valid upto 31.3.2013 and the purchases were made prior to 31.3.2013. But without considering the objections, the respondent passed the impugned proceedings by confirming reversal of input tax credit and observed that input tax credit cannot be claimed for the purchase made in the month of March 2013 and it should be claimed during the next financial year.

5. The learned counsel for petitioner submitted that the observation made in the impugned proceedings is against the provisions of Section 19(11) of the Tamilnadu Value Added Tax Act, 2006 as Section 19(11) of the Act permits every dealer to claim input Tax Credit within ninety days from the date of purchase and there is no specific provision that input tax credit for the purchases made in the previous year cannot be claimed in the next financial year. It is his further submission that in its objection, the petitioner has established that the seller has stopped his business with effect from 1.4.2013 and up to 31.3.2013 the seller was a registered dealer and hence the claim of input tax credit is in order.

6. The learned Additional Government Pleader, on the other hand, supported the orders under challenge.

7. The specific case of the petitioner is that the claim of input tax credit was made on the month of April 2013. Admittedly the petitioner claimed Input Tax Credit within 90 days as stipulated under Section 19(11) of Tamilnadu Value Added Tax, 2006.

8. Section 19(11) of Tamilnadu Value Added Tax, 2006 stipulates as under:

> "19(11): In case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later."

9. From the above, it is seen that without considering Section 19(11) of Tamilnadu Value Added Tax, 2006, the assessment order came to be passed reversing Input Tax Credit claimed by the petitioner. Further, the Registration

Certificate of the seller was valid till 31.03.2013 which the respondent failed to consider, despite the reply filed on 03.02.2015. Hence, the impugned order passed by the respondent is hereby set aside and the matter is remitted back to the respondent for consideration afresh, after affording due opportunity to the petitioner. Such an exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

msr/rsb

s/d-
Assistant Registrar(AS)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Sriperumbudur Assessment Circle,
Varadharajapuram,
Chennai-602 103.

+ 1 cc to Spl.G.P.(T) SR 144

+ 1 cc to Mr.R.Kumar, Advocate SR 94

rsy(co)
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